

S T A T E R E P O R T E R
O F
E D U C A T I O N L A W
VOLUME 7

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF MONTANA:

SCHOOL DISTRICT NO. 134, MCCONE
COUNTY, MONTANA,

Appellant,

v.

NO. OSPI 127-87
Decided: July 25, 1988

TODD SORG and MARALOU (BABE)
KADRAMAS,

Respondent.

Memorandum and Order by Ed Argenbright, State Superintendent.

Appeal from the McCone County Superintendent.

TUITION, Whether the requirements for applications to be filed were complied with and the effect of non-compliance, and whether substantial credible evidence supports the decision of the county superintendent.

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MEMORANDUM AND ORDER

This is a controversy involving tuition and transportation applications for Todd Sorg and Marylou (Babe) Kadramas, which were initially denied by School District 134, McCone County, Montana. That decision was reversed by the hearing officer for the McCone County Superintendent of School.

The Board of Trustees has appealed that decision by the County Superintendent. The matter has been briefed and now the State Superintendent, being fully advised in the premises issues this Memorandum and Order with findings of fact and conclusions of law included therein.

Two issues appear to be presented 1) whether or not the requirements of section 20-5-301(2) which require applications be filed with the County Superintendent of Schools before July 1, 1986 were complied with and if not, the effect of the noncompliance: 2) whether or not there is substantial credible evidence in the record to support the decision of the hearing officer for the McCone County Superintendent of Schools in this matter.

The Board of Trustees argues that the County Superintendent committed an error of law when he determined that the board had customarily entertained tuition applications filed after July 1, that it was the customary practice to accept late filings and that no prejudice was shown to the board of trustees because of the late filing.

In the instant case applications were filed with the clerk of the school district who maintains an office in her home. The Sorg application was filed with the clerk of the school district on July 1, the Kadramas application was received July 15. Both applications were taken by the school district clerk to the school board meeting on the tuition issues held July 28, 1986. The issue of timeliness arose before the county superintendent and was not the basis for denial of the applications before the board of trustees. While it is apparent that the procedures in the statute were not followed I agree with the county superintendent's hearing officer that the school district suffered no prejudice. It set the hearings and ruled on the substance of the applications and did not cite the procedural defect as a basis for the denial. Based on the record before me and the findings of the county superintendent's hearing officer, I find the procedural error was harmless in this particular case and did not prejudice the school district.

The scope of review of the State Superintendent when reviewing these matters has been set forth in Trustees of Lincoln County School District Co. 13 v. Holden, 754 P.2d 506 (Mont. 1988) [7 Ed Law 203 123], Frazer School District No. 2 v. Forsness, et al., 734 P.2d 1218 (Mont. 1987), 44 St. Rptr. 624 [6 Ed Law 96] and Frazer School District No. 2 v. Flynn, et al., 732 P.2d 409 (Mont. 1987), 44 St. Rptr. 248 [6 Ed Law 68]. The test is whether or not there is substantial credible evidence to support the findings of the county superintendent's

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hearing officer. The State Superintendent cannot add additional findings or substitute his judgment for the judgment of the hearing officer before, see also Yanzick v. School District No. 23, Lake County, Montana, et al., 641 P.2d 431 (Mont. 1982), 196 Mont. 375, 2 Ed.Law Rep. 1179, 39 St. Rptr. 191 [1 Ed Law 1].

Upon review of the record herein I find substantial credible evidence to support the findings of the county superintendent's hearing officer and hereby adopt them as my own. I find no other error of law in the conclusions of law and having considered all other arguments raised by the appellants and finding no merit to them, I hereby affirm the order of the county superintendent from McCone County dated September 30, 1986.

DATED this 25th day of July, 1988.

s/ ED ARGENBRIGHT
State Superintendent